

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

U. S. Courts
District of Texas
1970

MAR 15 2005

J. B. Milby, Clerk of Court

**MAGGIE HOWE, on behalf of herself
and others similarly situated,**

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Plaintiff,

V.

Civil Action No. H - 03 - 4298

**HOFFMAN-CURTIS PARTNERS LTD.,
LLP, et al.**

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Defendants.

MEMORANDUM AND ORDER

Pending before the Court are Plaintiff's Motion for Summary Judgment, Defendants' Motion for Summary Judgment, and Defendants' Motion to Late File Document and Consider Timely Defendants' Motion for Summary Judgment. Defendants' Motion to Late File Document is **GRANTED**.

Plaintiff brought this case under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201 et seq., to recover overtime wages from her employers. Defendants dispute that Plaintiff was their “employee” as defined by the FLSA, arguing instead that she was an independent contractor and therefore not covered by the FLSA. Even if Plaintiff is found to be an employee of Defendants, Defendants dispute Plaintiff’s calculation of the wages she claims to be owed. Plaintiff and Defendants have each moved for summary judgment.

A motion for summary judgment under Federal Rule of Civil Procedure 56 requires the Court to determine whether the moving party is entitled to judgment as a matter of law, based on the evidence thus far presented. *See Fed. R. Civ. P. 56(c).* “Summary judgment is proper if the

pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” *Kee v. City of Rowlett*, 247 F.3d 206, 210 (5th Cir. 2001) (citations omitted). Evidence is construed in the light most favorable to the non-moving party. *Id.*

Having considered both Motions for Summary Judgment and the responses thereto, and conducting a hearing on the Motions, the Court finds that there are a number of factual issues in dispute. Judgment as a matter of law is inappropriate. Therefore, the two Motions for Summary Judgment are **DENIED**.

IT IS SO ORDERED.

SIGNED this 14th day of March, 2005.


~~Keith P. Ellison~~
KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE

TO INSURE PROPER NOTICE, EACH PARTY WHO RECEIVES THIS ORDER SHALL FORWARD A COPY OF IT TO EVERY OTHER PARTY AND AFFECTED NON-PARTY EVEN THOUGH THEY MAY HAVE BEEN SENT ONE BY THE COURT.